

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8429 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PUSHPABEN W/O. KANTILAL

DAMODARDAS SHAH

Versus

UNION OF INDIA

Appearance:

MR HARSHAD J SHAH, Advocate for Petitioner

MR JAYANT PATEL, Addl.Central Govt.Standing Counsel
for Respondent No. 1

SERVED BY DS for Respondent No. 3, 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 26/12/96

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner Pushpaben has challenged the order of detention passed against her husband Kantilal Shah on or about 19.12.1974, under which said Kandilal Damodardas Shah was detained under the provisions of Conservation of

Foreign Exchange and Prevention of Smuggling Activities
Acata, 1974 on 3.5.1979.

2. The order of detention was challenged by way of filing Special Criminal Application No.51/75 (Annexure 'G') before this Court. This Court dismissed the writ petition by order dated 4.2.1977, which reads as follows:

"Coram : S.Obul Reddy, CJ & M C Trivedi, J.
(Dated: 4.2.1977)

We are dismissing the application as the enforcement of the fundamental rights conferred by Article 14,19,21 and 22 of the Constitution of India have been suspended. It would however be open to the petitioner to make fresh application after the ban imposed on enforcement of the abovesaid rights is lifted. Subject to the observation, this Application is dismissed. Rule discharged."

3. The say of the petitioner is that the notice dated 3.5.1979 was issued under the provisions of the SAFEMA Act on the basis of detention of Kantilal D Shah. Petitioner says that her earlier petition was rejected in view of the Attorney General's case, with the group of cases decided on 9.8.1994.

4. Mr J N Patel, learned Addl. Central Government Standing Counsel raised preliminary objections with respect to the maintainability of the present Special Civil Application. The first preliminary objection is that the present Special Civil Application is barred by principles of res judicata and constructive res judicata. Secondly, the present Special Civil Application has been filed in November 1996 i.e. after a delay of 18 years. Dealing with the second preliminary objection, he submits that this aspect has been examined in detail by this court in a group of cases being Special Civil Application No. 6897/96 and other matters. By judgment dated 4.10.1996 this court held that the Special Civil Application is barred by principles of res judicata. Mr H T Shah, learned Advocate submits that in view of the decision of the Supreme Court reported in AIR 1960 SC 1457 and AIR 1968 SC 958, the decision of the learned Single Judge in Special Civil Application No.6897/96 cannot be taken as binding decision. It may be stated that the judgment of the learned Single Judge is based on the decision of the Supreme Court in the case of Forward Construction Co. vs. Prabhat Mandal, reported in AIR 1986 SC 391, Direct Recruit Class II Engg.Officers'

Association v. State of Maharashtra, reported in AIR 1990 SC 1607 and the Full Bench decision in the case of Bhanubhai M Patel vs. State of Gujarat, reported in 1996(2) GLR 803. The cases referred by the learned Advocate has no application to the facts of the present case. In view of this, I am in complete agreement with the view expressed by Brother M R Calla, J. in the judgment referred to above. In view of this, the preliminary objections raised by the learned Addl. Central Government Standing Counsel is upheld.

4. The petitioner has tried to raise certain contentions on the basis of acquittal recorded by the Metropolitan Magistrate in Customs Cases. In my view, the said judgment cannot be of any help as the SAFEMA notices were issued on the basis of detention of the petitioner's husband-Kantilal D Shah.

5. In view of the aforesaid, this Special Civil Application is rejected. Rule discharged.

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